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Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557

Although many people with COVID-19 get better within weeks, some people continue to experience symptoms that can last months after first being infected, or may have new or recurring symptoms at a later time.[1] This can happen to anyone who has had COVID-19, even if the initial illness was mild. People with this condition are sometimes called “long-haulers.” This condition is known as “long COVID.”[2]

In light of the rise of long COVID as a persistent and significant health issue, the Office for Civil Rights of the Department of Health and Human Services and the Civil Rights Division of the Department of Justice have joined together to provide this guidance.

This guidance explains that long COVID can be a disability under Titles II (state and local government) and III (public accommodations) of the Americans with Disabilities Act (ADA),[3] Section 504 of the Rehabilitation Act of 1973 (Section 504),[4] and Section

1557 of the Patient Protection and Affordable Care Act (Section 1557).[5] Each of these federal laws protects people with disabilities from discrimination.[6] This guidance also provides resources for additional information and best practices. This document focuses solely on long COVID, and does not address when COVID-19 may meet the legal definition of disability.

The civil rights protections and responsibilities of these federal laws apply even during emergencies.[7] They cannot be waived.

1. What is long COVID and what are its symptoms?

According to the Centers for Disease Control and Prevention (CDC), people with long COVID have a range of new or ongoing symptoms that can last weeks or months after they are infected with the virus that causes COVID-19 and that can worsen with physical or mental activity.[8]

Examples of common symptoms of long COVID include:

- Tiredness or fatigue
- Difficulty thinking or concentrating (sometimes called “brain fog”)
- Shortness of breath or difficulty breathing
- Headache
- Dizziness on standing
- Fast-beating or pounding heart (known as heart palpitations)
- Chest pain
- Cough
- Joint or muscle pain
- Depression or anxiety
- Fever
- Loss of taste or smell

This list is not exhaustive. Some people also experience damage to multiple organs including the heart, lungs, kidneys, skin, and brain.

2. Can long COVID be a disability under the ADA, Section 504, and Section 1557?

Yes, long COVID can be a disability under the ADA, Section 504, and Section 1557 if it substantially limits one or more major life activities.[9] These laws and their related rules define a person with a disability as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual ("actual disability"); a person with a record of such an impairment ("record of"); or a person who is regarded as having such an impairment ("regarded as").[10] A person with long COVID has a disability if the person's condition or any of its symptoms is a "physical or mental" impairment that "substantially limits" one or more major life activities.

This guidance addresses the "actual disability" part of the disability definition. The definition also covers individuals with a "record of" a substantially limiting impairment or those "regarded as" having a physical impairment (whether substantially limiting or not). This document does not address the "record of" or "regarded as" parts of the disability definition, which may also be relevant to claims regarding long COVID.

a. Long COVID is a physical or mental impairment

A physical impairment includes any physiological disorder or condition affecting one or more body systems, including, among others, the neurological, respiratory, cardiovascular, and circulatory systems. A mental impairment includes any mental or psychological disorder, such as an emotional or mental illness.[11]

Long COVID is a physiological condition affecting one or more body systems. For example, some people with long COVID experience:

- Lung damage
- Heart damage, including inflammation of the heart muscle
- Kidney damage
- Neurological damage
- Damage to the circulatory system resulting in poor blood flow
- Lingering emotional illness and other mental health conditions

Accordingly, long COVID is a physical or mental impairment under the ADA, Section 504, and Section 1557.[12]

b. Long COVID can substantially limit one or more major life activities

“Major life activities” include a wide range of activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. The term also includes the operation of a major bodily function, such as the functions of the immune system, cardiovascular system, neurological system, circulatory system, or the operation of an organ.

The term “substantially limits” is construed broadly under these laws and should not demand extensive analysis. The impairment does not need to prevent or significantly restrict an individual from performing a major life activity, and the limitations do not need to be severe, permanent, or long-term. Whether an individual with long COVID is substantially limited in a major bodily function or other major life activity is determined without the benefit of any medication, treatment, or other measures used by the individual to lessen or compensate for symptoms. Even if the impairment comes and goes, it is considered a disability if it would substantially limit a major life activity when the impairment is active.

Long COVID can substantially limit a major life activity. The situations in which an individual with long COVID might be substantially limited in a major life activity are diverse. Among possible examples, some include:

- A person with long COVID who has lung damage that causes shortness of breath, fatigue, and related effects is substantially limited in respiratory function, among other major life activities.
- A person with long COVID who has symptoms of intestinal pain, vomiting, and nausea that have lingered for months is substantially limited in gastrointestinal function, among other major life activities.
- A person with long COVID who experiences memory lapses and "brain fog" is substantially limited in brain function, concentrating, and/or thinking.

3. Is long COVID always a disability?

No. An individualized assessment is necessary to determine whether a person's long COVID condition or any of its symptoms substantially limits a major life activity. The CDC and health experts are working to better understand long COVID.

4. What rights do people whose long COVID qualifies as a disability have under the ADA, Section 504, and Section 1557?

People whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557. Put simply, they are entitled to full and equal opportunities to participate in and enjoy all aspects of civic and commercial life.

For example, this may mean that businesses or state or local governments will sometimes need to make changes to the way that they operate to accommodate a person's long COVID-related limitations. For people whose long COVID qualifies as a disability, these changes, or "reasonable modifications," may include:

- Providing additional time on a test for a student who has difficulty concentrating
- Modifying procedures so a customer who finds it too tiring to stand in line can announce their presence and sit down without losing their place in line
- Providing refueling assistance at a gas station for a customer whose joint or muscle pain prevents them from pumping their own gas
- Modifying a policy to allow a person who experience dizziness when standing to be accompanied by their service animal that is trained to stabilize them

5. What federal resources are there for people with symptoms of long COVID?

- The Office for Civil Rights of the Department of Health and Human Services (HHS) has the following page on civil rights and COVID-19: https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html>.
  - If you believe that an entity covered by HHS civil rights laws has violated your rights protected under these authorities, you may file a complaint at https://www.hhs.gov/ocr/complaints/index.html <https://www.hhs.gov/ocr/complaints/index.html>.
- The Civil Rights Division of the Department of Justice has the following page on its ADA.gov website that discusses topics related to COVID-19 and the ADA: https://www.ada.gov/emerg_prep.html <https://www.ada.gov/emerg_prep.html>.
  - If you believe that you or another person has been discriminated against by an entity covered by the ADA, you may file a complaint with the Disability Rights Section (DRS) in the Department of Justice. Information about how to file a complaint is available at https://www.ada.gov/fact_on_complaint.htm <https://www.ada.gov/fact_on_complaint.htm>.

- CDC's website has the following page on post-COVID conditions, which discusses long COVID: https://www.cdc.gov/covid/long-term-effects/index.html <https://www.cdc.gov/covid/long-term-effects/index.html> .
- The Administration for Community Living's document, "How ACL's Disability and Aging Networks Can Help People with Long COVID," provides information on resources and programs to assist people with long COVID. This document is available at https://acl.gov/sites/default/files/COVID19/ACL_LongCOVID.pdf - PDF.
- While employment is outside of the scope of this guidance document, individuals who wish to learn more about COVID-19 and employment can visit the following Equal Employment Opportunity Commission page, which provides COVID-19 information and resources: www.eeoc.gov/coronavirus <http://www.eeoc.gov/coronavirus>.
  - The EEOC's main COVID-19 publication, *What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, is available at: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.
  - For information about filing an employment discrimination charge, see https://www.eeoc.gov/filing-charge-discrimination <https://www.eeoc.gov/filing-charge-discrimination>.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or the Departments' policies.

July 26, 2021

Footnotes

[1] *See* Centers for Disease Control and Prevention, *Post-COVID Conditions*, www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html <http://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited July 21, 2021).

[2] The Centers for Disease Control and Prevention also recognizes other post-COVID conditions, a series of illnesses resulting in debilitating conditions, that can be similar to long COVID. *See* Centers for Disease Control and Prevention, *Post-COVID Conditions*, www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html <http://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited July 21, 2021). This guidance may also be applicable to other post-COVID conditions.

[3] 42 U.S.C. §§ 12101-12103, 12131-12189. Although the ADA’s definition of disability applies to all parts of the ADA, this guidance only addresses examples that may arise under Titles II and III of the ADA.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 18116.

[6] https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> .

[7] *See* Department of Justice, *Statement by the Principal Deputy Assistant Attorney General for Civil Rights Leading a Coordinated Civil Rights Response to Coronavirus (COVID-19),* https://www.justice.gov/opa/pr/statement-principal-deputy-assistant-attorney-general-civil-rights-leading-coordinated-civil <https://www.justice.gov/opa/pr/statement-principal-deputy-assistant-attorney-general-civil-rights-leading-coordinated-civil> (last visited July 21, 2021); *See also* Department of Health and Human Services, *Civil Rights and COVID-19, A Compendium of Guidance on the Civil Rights Implications of the COVID-19 Pandemic*, https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html </civil-rights/for-providers/civil-rights-covid19/index.html> (last visited July 21, 2021).

[8] *See* Centers for Disease Control and Prevention, *Post-COVID Conditions*, www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html <http://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited July 21, 2021).

[9] This guidance only addresses the definition of disability under these Federal civil rights laws. It does not cover other definitions of disability or eligibility requirements such as those necessary to qualify for Federal benefit programs under Social Security.

[10] *See, e.g.*, 42 U.S.C. § 12102(1); 29 U.S.C. § 705(9)(B), (20)(B); 28 C.F.R. §§ 35.108, 36.105; 45 C.F.R. § 92.102(c).

[11] 28 C.F.R. §§ 35.108(b), 36.105(b); 45 C.F.R. 92.102(c).

[12] While this guidance document focuses on long COVID, we note that COVID-19 is also a physiological condition affecting one or more body systems, and is therefore also a physical or mental impairment.

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